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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,203	05/07/2002	Andreas Hensel	10191/2126	7942
26646	7590	04/07/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ALLEN, STEPHONE B	
			ART UNIT	PAPER NUMBER
			2878	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,203

Applicant(s)

HENSEL, ANDREAS

Examiner

Stephone B. Allen

Art Unit

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16, 17, 23-25 and 28-30 is/are rejected.
- 7) ☒ Claim(s) 18-22, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

According to the preliminary amendment, claims 1-15 have been canceled and new claims 16-30 have been added.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16, 17, 23, 24 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,822,473 to Magel et al. (Magel).

With respect to claim 16, 17, 23 and 24, Magel discloses an optoelectronic sensor based on optodes (Figures 3 and 4), comprising a semiconductor substrate (n-type silicon substrate) 22 (col. 3, line 53 - col.4, line 3); a plurality of separate light-sensitive sensors (photodiodes) 16 arranged on substrate 12; a light emitter (LED) 14 located in a center of substrate 12; and a transparent optode material 48 covering emitter 14 and sensors 16, wherein the transparent optode material is reflective on a side that faces away from the substrate.

With respect to claim 30, Magel discloses that the sensor is a gas sensor.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magel et al. (Magel).

With respect to claim 25, Magel is silent as to the type of gas sensed. However, the exact chemical to which the sensor is sensitive would have been an obvious design feature for one of ordinary skill in the art to make in accordance with the environment in which the sensor is to monitor.

With respect to claim 29, Magel is silent as the light source being capable of being operated by an electrical pulse. It would have been obvious for one of ordinary skill in the art to provide an electrical pulse to the light to ensure that interference from other light is decreased.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magel et al. (Magel) in view of U.S. Patent No. 6,704,470 to Schneider et al. (Schneider).

Magel fails to disclose the inclusion of a plurality of barriers arranged between transmission branches. Schneider discloses an optoelectronic sensor that includes the use of barriers between transmission branches (col. 5, lines 15-22). It would have been obvious for one of ordinary skill in the art to include the use of barriers as taught in

Schneider into the sensor of Magel as a means of preventing or limiting interference between signals.


Allowable Subject Matter

Claims 18-22, 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephone B. Allen whose telephone number is (571) 272-2434. The examiner can normally be reached on Mon-Thurs from 0900-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave P. Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephone B. Allen
Primary Examiner
Art Unit 2878